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IN THE

Supreme Court of the United States

October Term, 1970
No. 1560

DONALD A. DOWELL,

Petitioner,

vs.

BEECH ACCEPTANCE CORPORATION, INC., NEVADAIR COMPANY, NORMAN LARSON COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California.

BRIEF FOR RESPONDENTS IN OPPOSITION.

Opinions Below.

The opinion of the California Supreme Court (Petition, App. p. 57) is reported at 3 Cal. 2d 544. The opinion of the Second Appellate Division of the California Court of Appeal (Petition, App. p. 29) is reported at 84 Cal. Rptr. 654.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented.

Whether the system of recordation of title to aircraft under the Federal Aviation Act (49 USCA

§1403) affects the priorities under state law between the holder of a prior recorded security interest in an airplane and a subsequent buyer who failed to record his own title and knowingly and willfully failed to search the Federal Aviation Agency (F.A.A.) records to discover the security holder's prior claim.

Statutes Involved.

The pertinent provisions of the Federal Aviation Act of 1958 and the California Commercial Code are set forth in Petitioner's Appendix to Petition.

Statement of the Case.

There is no dispute over the facts giving rise to the question presented.

A Beechcraft Bonanza aircraft, N-2041W, manufactured by Beech Aircraft Corporation, not a party to this action, was sold by that manufacturer to respondent Nevadair Company, one of its distributors. On October 26, 1965, Nevadair made a conditional sale of the plane to one Tanger, a duly authorized Beechcraft dealer. Under the terms of the written conditional sales contract Tanger was not permitted to sell the plane without Nevadair's consent. On the same day, Nevadair assigned all of its right, title and interest in the Conditional Sales Contract to respondent Beech Acceptance Corporation, Inc. (hereinafter "assignee") and Tanger was notified thereof.

On October 27, 1965, Assignee filed the contract and the assignment thereof with the Federal Aviation Agency (49 U.S.C. §1403), and the instruments were thereafter recorded on November 4, 1965.

Between July 15 and 18, 1966, petitioner negotiated with Tanger for the purchase of the plane.

Petitioner, an experienced pilot with several thousand hours of flying time, had an instrument rating and was licensed to fly gliders, helicopters, single engine, multi-engine and commercial aircraft. He had worked for Douglas Aircraft where he was employed as a flight engineer and co-pilot. He was also a "Bird Dog", or one who in aircraft jargon or lingo attempts to sell aircraft belonging to others for a fee or commission. As such, petitioner had placed ads for the purchase or sale of aircraft in the Los Angeles Times for a period of years prior to 1966. Prior to purchasing the aircraft involved herein, petitioner obtained a vendor's exemption certificate or a sales tax permit as he had decided to get involved in buying and selling aircraft.

During the year 1963, petitioner purchased a K Bonanza aircraft from a private individual, the title to which he checked with the FAA. At that date, as well as at all times involved herein, petitioner was a member of the Aircraft Owners & Pilots Association (hereinafter "AOPA"). One of the services performed by AOPA for its members is to check the status of the title of aircraft with the FAA and to report thereon. For just Three Dollars and fifty cents ($3.50), a member can telephone the AOPA facility in Oklahoma City and obtain an aircraft title report. This service apparently is quite expeditious for while petitioner was on the witness stand and unable to recall the specifics as to a particular aircraft, he testified: "We can find out real quick if you want to call Oklahoma".

At no time did Tanger advise petitioner of Assignee's interest. At no time did petitioner ask Tanger

any questions as to whether there were any liens or encumbrances on the aircraft.

When asked by his counsel as to why he did not question Tanger as to title, petitioner testified that the believed Beech Corporation would back Tanger up if Tanger didn't make good. It apparently had occurred to petitioner, therefore, that Tanger might not have good title to the aircraft, but this did not concern him enough to make a title search in the expectation that Beech would back Tanger. Petitioner obviously was referring to Beech Aircraft Corporation, not a party to this action, rather than assignee, since assignee was as unknown to petitioner as petitioner was to assignee.

At no time before purchasing the plane did petitioner make inquiry with the FAA which he knew he could have done expeditiously for $3.50.

Petitioner purchased the plane on July 18 and took delivery on July 19, 1966. Following the purported sale, Tanger continued to make monthly payments due under the conditional sales contract to assignee in Kansas. On September 14, 1966, Tanger advised an employee of assignee and an employee of Nevadair Company that the aircraft was not sold but was "out on demonstration". As a result of the foregoing payments and advice, assignee had no notice of the purported sale to petitioner until September 22, 1966, when Tanger confessed to an employee of assignee that he had sold the aircraft to petitioner.

The next day, September 23, 1966, assignee, Nevadair and respondent Norman Larson Company, Nevadair's parent corporation, removed the aircraft from petitioner's possession without his knowledge or consent and upon the advice of counsel.

As a result, petitioner brought this action against respondents and Tanger for recovery of the aircraft and for damages.

After trial to the court, sitting without a jury, judgment was entered declaring petitioner to be the owner and entitled to possession of the aircraft and ordering that petitioner take nothing against Tanger.

The Second Appellate District of the California Court of Appeal affirmed the trial court's judgment except as to an award for punitive damages of $1,000.00 for respondents' seizure of the airplane.

Upon appeal to the Supreme Court of California, the trial court's judgment was reversed and remanded to the trial court with directions to enter judgment for assignee establishing the priority of assignee's security interest in the airplane. The California Supreme Court was unanimous in holding that the system of recordation of title to aircraft under the Federal Aviation Act affects priorities under state law between the holder of a prior recorded security interest and a subsequent buyer who fails to record and fails to search the F.A.A. records to discover the security holder's prior claim.

ARGUMENT.

1. The Decision of the California Supreme Court Is Clearly Correct.

The decision of the California Supreme Court holds that one who first records his interest in an airplane under the federal recordation system prevails over a subsequent purchaser of the plane who consciously refused to check record title thereto, even though that buyer had earlier purchased another plane the title to which he checked with the FAA; even though that purchaser knew he could have checked the title to the plane in question for $3.50; and even though that purchaser was expressly found to be "familiar with the fact that title to aircraft and liens thereon were registered with the Federal Aviation Agency in Oklahoma City." The basis for the decision is found in §503 of the Federal Aviation Act of 1958, 49 U.S.C.A. §1403.[1]

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[1]Section 1403, provides in relevant part: "(a) The Administrator shall establish and maintain a system for the recording of each and all of the following: (1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States; (2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to or any interest in, any specifically identified aircraft engine . . . or any specifically identified aircraft propellor . . . and also any assignment of amendment thereof or supplement thereto; . . . (b) The Administrator shall also record under the system provided for in subsection (a) of this section any release, cancellation, discharge, or satisfaction relating to any conveyance or other instrument recorded under said system. (c) No conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid in respect of such aircraft, aircraft engine or engines, [or] propellers . . . against any person other than the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Administrator: . . . (d) Each conveyance or other instrument record-

The California Supreme Court correctly reasoned that:

> "* * * section 1403 provides a comprehensive system of recordation the purpose of which is to bring order to the field of aircraft titles and to protect the holders of substantial property interests in aircraft. Neither of those purposes is served if we apply state law in a manner virtually ignoring the existence of the federal system. If prior recorded interests are not protected against subsequent buyers who fail to search title, the federal policy in favor of the recordation of aircraft titles will be frustrated and subsequent purchasers . . . will cavalierly decline to investigate title so as to avoid 'actual notice' under Commercial Code section 9307."

The decision is consistent with this Honorable Court's denial of petition for certiorari in the in-point case of *International Atlas Services Inc. v. Twentieth Century Aircraft Co.*, (251 Cal. App. 2d 434, cert. den. 389 U.S. 1038). In that case, Atlas, a corporation in the business of repairing and maintaining aircraft engines, sued for claim and delivery of three aircraft engines and one QEC (quick engine change) unit attached to a DC6B airplane. The controversy developed out of the sale of the DC6B by Twentieth Century to President Airlines under a conditional sales

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ed by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation, . . . (f) The Administrator shall keep a record of the time and date of the filing of conveyances and other instruments with him in the order of their reception, in files to be kept for that purpose, and indexed according to . . . the identifying description of the aircraft, aircraft engine, or propeller, . . . and . . . the names of the parties to the conveyance or other instrument."

contract. President employed Atlas to service and maintain the aircraft. Its legal title remained in Twentieth pursuant to a conditional sales contract which was recorded with the FAA in Oklahoma City. When President defaulted in its payments under the contract, Twentieth Century repossessed the aircraft. At the time of repossession, the aircraft was equipped with the engines which Atlas had installed in the ordinary course of scheduled maintenance to which Atlas had retained legal title. Atlas claimed priority under California Commercial Code §9314 which gives a security interest in accessions to personal property, such as aircraft engines, priority over a security interest in the whole, such as an aircraft. The issue was priority of right between Twentieth and Atlas with respect to the engines. In affirming judgment for Twentieth, the Court stated (438-441):

> ". . . Nevertheless, we have concluded that *California law does not apply to this case, that the controversy is governed by the laws of the United States,* and that under federal law Twentieth Century must prevail. As we see it, general California law on the subject of title and liens to personal property in relation to component parts has been *superseded* by specific federal law with respect to aircraft. Section 503 of the Federal Aviation Act of 1958, derived from the Civil Aeronautics Act of 1938, provides for centralized registration and recordation of interests in aircraft with the Federal Aviation Agency." . . . (quoting 49 USCA §1403). (Emphasis added).
>
> "It seems clear that Congress has recognized the extreme mobility of large aircraft for which neither state nor national boundaries can delin-

eate or assure any fixed controls. Without some central system of recording ownership and other property interests in aircraft, security transactions involving aircraft engaged in continuous movement would amount to little more than attempts to control ownership of fish and game, which become objects of ownership only when taken. (Civil Code § 656). To bring order into the field of aircraft ownership and finance, the Federal government in a manner within its sphere set up a *comprehensive scheme of centralized recordation, which if properly used, provides adequate protection for all substantial property interests in large aircraft,* both *for the aircraft itself* and for its principal component parts. Under subsection 1403(a)(1) a security interest in the aircraft as a whole can be recorded. Under subsection 1403(a)(2) an interest in its specific engines and propellers can be recorded. A conveyance, lease, or *security instrument* recorded under subsection 1403(a) is fully valid against all persons from the time of its filing without further or other recordation. Under subsection 1403(c) a conveyance or instrument which could have been recorded but was not, is, until so recorded, invalid against a person without actual notice of the conveyance or instrument. . . . (Emphasis added)

"Here we have a complete and comprehensive system of recordation which necessarily supersedes inconsistent state law. Constitutionally, the federal government may be said to have fully occupied the field of recordation of interests in aircraft and of rights derived from recordation, and to have established paramount law in this area. Atlas

could have fully protected its rights in these engines and preserved a good title throughout the world by taking advantage of this national system of recordation and recording its interest in specifically numbered aircraft engines with the Federal Aviation Agency. Its failure to record in Oklahoma City its ownership of the engines prior to repossession of the aircraft by Twentieth Century resulted in the subordination of its interest in the engines to the recorded interest of Twentieth Century in the aircraft as a whole. The latter, by recording with the Federal Aviation Authority, established *a superior right to the aircraft*, its engines, and its propellers, effective against all other interests in the aircraft except known or recorded adverse interests. This *paramount interest* under federal law effectively *superseded* any inconsistent interest derived from state law." (Emphasis added).

The California Supreme Court's decision is required by the mandate of the Supremacy clause of the United States Constitution. Under the Federal Aviation Act enacted by Congress, a system has been provided for the recording of instruments which affect the title to, or any interest in, any civil aircraft (49 USCA §1400 *et seq.*). It is unlawful for any person to operate any aircraft eligible for registration if such aircraft is not registered by its owner with the FAA (49 USCA §1401). Instruments recorded with the FAA are valid as to all persons without further or other recordation (49 USCA §1403(d)).

That Federal law fully occupies the field of recordation and transfer of interests in aircraft cannot

be denied. It has been expressly held that by enactment of the Federal Aviation Act (49 USCA §§1400 *et seq.*):

> "The congress has preempted the field of conveyancing of interests in aircraft and portions thereof, to facilitate the control and promotion of air commerce. The power to do so may not be denied."
>
> *United States v. United Aircraft* (D.C. Conn.), 80 F. Supp. 52, 54.

Thus, the exclusive method of transferring interests in aircraft is by compliance with the Act. It has been so held in *Crescent City Aviation, Inc. v. Beverly Bank* (Ind.), 219 N.E. 2d 446, 448:

> "In the province of aviation, by the enactment of the Federal Aviation Act, Congress has provided *the only way* aircraft may be transferred and *the only way* in which liens upon aircraft may be duly recorded." (Emphasis added).

And *In Re Veteran's Air Express, Inc.* (D.C. N.J.), 76 F. Supp. 684, it is said: (688)

> "It is clear that the Congress has prescribed the only way in which aircraft may be transferred and in which liens upon aircraft may be duly recorded. *In this manner, all persons dealing with aircraft are upon full legal notice concerning possible liens and are charged with the duty of inquiry at the central recording office of the Civil Aeronautics Administration (now the FAA) with respect to any aircraft in which they might be concerned.*" (Emphasis added).

By express declaration of Article VI, clause 2, laws made pursuant to the United States Constitution are the Supreme Law of the land and are binding on every Court. The United States Supreme Court in *Free v. Bland,* 369 U.S. 665, 82 S. Ct. 1089 at 1092, 8 L. Ed. 2d 180, stated:

> "The relevant importance to the State of its own law is not material when there is a conflict with a valid federal law . . . [A]ny state law, however clearly within a state's acknowledged power, which interferes with or is contrary to federal law, must yield."

Application of the California Commercial Code not only "interferes" with but is directly "contrary to federal law"—The Federal Aviation Act. This because the provisions of §§2403 and 9307 of the California Commercial Code serve to defeat the validity of the recordation provisions of the Act. Sections 2403 and 9307 of the California Commercial Code, therefore, must yield.

Numerous other jurisdictions have invoked the Supremacy Clause to uphold the recordation provisions of the Federal Aviation Act.[2]

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[2]California has said in *Pope v. National Aero Finance Co.,* 236 Cal. App. 2d 772, 733:

> "The recording and registration of documents to title of aircraft is governed by Federal statute rather than by State laws. . . . The Federal statute requiring recordation and providing for the effect to be given to instruments not recorded pursuant thereto *pre-empts any state laws* which might otherwise apply (citations)." (Emphasis added).

And in *International Atlas Services, Inc. v. Twentieth Century Aircraft Co.* (251 Cal. App. 2d 434, cert. den. 389 U.S. 1038), (440):

> "Constitutionally, the Federal Government may be said to have fully occupied the field of recordation of in-

The decision of the California Supreme Court upholds the recordation provisions of the Federal Aviation Act and thereby prevents throwing the aviation financing industry into a state of chaos. It affords

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terests in aircraft and of rights derived from recordation, and to have established *paramount* law in ths area." (Emphasis added).

In holding an unrecorded mechanic's lien invalid as against the interest of a conditional seller recorded pursuant to federal law, the Indiana Court in *Crescent City Aviation, Inc. v. Beverly Bank* (Ind.), 219 N.E. 2d 446 said (448):

> "Under the Supremecy Clause of the Constitution of the United States, Art. 6, Cl. 2, where the Congress, in a proper sphere of law, enacts legislation, the federal law becomes superior to that of the state. *Free v. Bland* (1962), 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed.2d 180, 183."

In holding that §1403 of the Act pre-empts state law on the question of priority, the well-reasoned opinion in *Smith v. Eastern Airmotive Corp.* (N.J.), 240 A. 2d 17, concluded (25):

> " 'It is "familiar doctrine" that the federal policy 'may not be set at naught, or its benefits denied' by the law." Sears Roebuck & Co. v. Stiffel Co., 376 U.S. 225, 229, 84 S. Ct. 784, 787, 11 L.Ed. 2d 661 (1964); rehearing denied 376 U.S. 793, 84 S.Ct. 1131, 12 L.Ed.2d 87 (1964).' "

For other cases holding that the Federal Aviation Act, and particularly its recordation provisions, is the supreme law of the land, see the following:

United States v. United Aircraft (D.C. Conn.), 80 F. Supp. 52, 54;

State Securities Co. v. Aviation Enterprises, Inc. (10th Cir.), 355 F. 2d 225, 229;

Pacific Financial Corp. v. Central Bank & Trust Co. (5 Cir.), 296 F. 2d 68, 71;

Continental Radio Company v. Continental Bank, etc. (Tex.), 369 S.W. 2d 359;

Blalock v. Brown (Ga.), 51 S.E. 2d 610, 9 A.L.R. 2d 476;

Aircraft Investment Corp. v. Fisher Flying Service, Inc. (La.), 183 So. 2d 441; writ refused 186 So. 2d 441;

Marsden v. Southern Flight Service, Inc. (D.C. N.C.), 227 F. Supp. 411;

Wilson v. Barnes (Mo.), 221 S.W. 2d 731, 732;

In re Veterans' Air Express, Inc. (D.C.N.J.), 76 F. Supp. 684;

James Talcott, Inc. v. Bank of Miami Beach (Fla.), 143 So.2d 657.

stability in an area of vital concern to the aviation industry as well as the banking and financing industry, lending upon the security of aircraft, and to the title search companies who report on the status of the FAA records regarding aircraft title. The protection of recordation avoids uncertainty and provides a buyer and a lender with adequate protection.

Certainly in petitioner's case, a $3.50 telephone call for a title check with the FAA would have avoided this entire litigation. Moreover, there exist firms in Oklahoma City engaged in the business of producing title reports from the official FAA records for financial institutions and buyers and sellers of aircraft. The services of these companies include issuing aircraft title reports and providing an escrow service so that simultaneous release and recordation of new instruments can be effectuated.[3]

2. There Is No Conflict of Appellate Decision.

There exists throughout the United States numerous appellate decisions holding, as did the California Supreme Court below, that questions of priority between conflicting interests in aircraft are governed by the laws of the United States rather than state law. Two recent California decisions are: *Pope v. National Aero Finance Co.*, 236 Cal. App. 2d 722; and *International Atlas Services Inc. v. Twentieth Century Air-*

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[3] *E.g.*, it is indicated in the Amicus Curiae brief filed in the California Supreme Court on behalf of Insured Aircraft Title Service, Inc., an Oklahoma Corporation, that said firm is engaged in producing title reports for more than 2,000 financial institutions who make loans secured by aircraft. This firm offers escrow service so that simultaneous release and recordation of new instruments can be accomplished (Brief, Amicus Curiae, p. 6).

craft Co., 251 Cal. App. 2d 434, cert. den. 389 U.S. 1038. These two cases rely upon four cases from other jurisdictions.[4]

Other appellate cases adopting the rule of priorities based upon the federal recordation provisions include *Smith v. Eastern Airmotive Corp.* (1968), 99 N.J. Super. 340 [240 A.2d 17]; *Crescent City Aviation, Inc. v. Beverly Bank* (1966), 139 Ind. App. 669 [219 N.E. 2d 446], and *Dawson v. General Discount Corporation* (1950), 82 Ga. App. 29 [60 S.E. 2d 653]. In the last-cited case, the plaintiff-mortgagee, who had acquired and recorded his security interest while the subject aircraft was in the possession of the conditional buyer, brought suit for possession of the plane against a subsequent purchaser who had failed to search title before his purchase. In affirming a judgment for the plaintiff-mortgage, the court concluded:

> "Constructive notice was given by the recording of the instrument with the Civil Aeronautics Authority under the provisions of Title 49, U.S.C.A., which provides that every conveyance so recorded shall be valid as to all persons. No further act was required of the plaintiff to protect his rights. The defendant, before purchasing, had the opportunity to ascertain the paramount outstanding title by checking the records of the Civil Aeronautics Authority." (*Id.* at p. 658.)

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[4]*Marsden v. Southern Flight Service, Inc.* (D.C.M.D.N.C.), 227 F. Supp. 411 (relied upon in the *Pope* case); *Continental Radio Co. v. Continental Bank & Trust Co.* (Tex.), 369 S.W. 2d 359 (relied upon in the *Pope* case); *James Talcott, Inc. v. Bank of Miami Beach* (Fla.), 143 So. 2d 657 (relied upon in the *Pope* case); and *United States v. United Aircraft* (1948, D.C. Conn.), 80 F. Supp. 52 (relied upon in the *International* case).

Petitioner is unable to provide a single appellate decision in the United States which is in conflict with the decision of the California Supreme Court below. Instead, he has cited three Federal District Court cases,[5] each of which is factually distinguishable from the case at bar.

However, since only one of the three, *Northern Illinois Corp. v. Bishop Distributing Co.* (W.D. Mich. 1968), 284 F. Supp. 121, stands alone as the only case, trial or appellate, in the United States invoking the Commercial Code in the face of the Federal Aviation Act, it alone bears discussion. *Northern Illinois* is distinguishable factually from the present case in that there was no evidence, as in the case at bar, that the purchaser of the aircraft in question was a "Bird Dog", had a vendor's exemption certificate or a sales tax permit, had made a title check with the F.A.A. in connection with a previous purchase of an airplane and was aware that he could check title for $3.50 via a telephone call to Oklahoma City. There was no finding, as in the instant case, that the purchaser of the aircraft was familiar with the fact that title to aircraft and liens thereon were registered with the F.A.A. and that the purchaser made no inquiry of the F.A.A. as to the status of title to the aircraft purchased. Further, the *Northern Illinois* decision presupposes that "both plaintiff and defendants are innocent parties to a very unhappy chain of events" (284 F. Supp. at. 125). Equal innocence of the parties is lacking in the present case. Assignee had no knowledge of Tanger's

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[5]*Aircraft Investment Corp. v. Pezzani & Reid Equip. Co.*, 205 F. Supp. 80 (E.D. Mich. 1962); *Texas National Bank of Houston v. Aufderheide;* 235 F. Supp. 599 (E.D. Ark. 1965); and *Northern Illinois Corp. v. Bishop Distributing Co.*, 284 F. Supp. 121 (W.D. Mich. 1968).

purported sale of the aircraft to petitioner until long after it had occurred. Petitioner, on the other hand, as a party to the transactions, had personal knowledge of it. He knew that for $3.50 he could have checked title to the plane. Instead, with careless indifference, he elected to reject his "last clear chance". Accordingly, although this case presents "a very unhappy chain of events", the parties could hardly be termed equally innocent.

It is submitted, therefore, that if any conflict does exist regarding the priorities given by the Federal Aviation Act, it exists at the trial court level only, and is not of sufficient magnitude to warrant this Court's consideration.

Conclusion.

The decision of the California Supreme Court upholds the federal policy to foster recordation and to protect recorded interests. Petitioner asks this Court to abandon such policy in favor of a rule invoking conflicting state law which would give him priority in spite of the fact that he chose not to undertake a simple, convenient title search which would have revealed assignee's security interest recorded some eight months earlier. Denial of this petition will prevent the unjust result petitioner seeks.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

DAVID BERNARD,
Attorney for Respondents.

BELCHER, HENZIE & BIEGENZAHN,
Of Counsel.